STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization to Provide In-Region InterLATA Services in California

I commend Pacific Bell for the steps it has taken to open its local markets in California to competition. I also commend the California Public Utilities Commission for its ongoing and tireless efforts to make sure that the statutory market-opening requirements are met across the State.

Although I support granting this application, I write separately to address a number of concerns that have been raised in the course of this proceeding. The most troubling of these, for me, was the California Commission's determination that the application did not at present appear to meet the State's public interest standard. Such a concern, from any State Commission, is enough to give me pause. The public interest is a significant prong of our Section 271 approval process and one that does not always receive the attention it merits.

Although we are applying the federal statute, we consistently rely on State Commission findings in our Section 271 analysis. Moreover, our precedent holds that evidence that a Bell company has engaged in a pattern of discriminatory conduct or is disobeying federal and state telecommunications regulations would tend to undermine our confidence that the Bell company's local market is, or will remain, open to competition. I believe we must take the California Commission findings seriously and subject the public interest prong to heightened scrutiny in light of the State's findings. This is precisely what I have endeavored to do.

My conclusion, growing out of intensive analysis of both the application and the State's findings, is that the public interest is served by the majority's decision today. Significantly, the California Commission concluded in its public interest analysis that Pacific Bell has provided nondiscriminatory and open access to exchanges, including unbundling of exchange facilities, and that ongoing regulatory vigilance, oversight of Pacific Bell's activities, and enforcement could provide a check on Pacific Bell's ability to act anti-competitively. Given this finding, the FCC must be especially vigilant as it monitors Pacific Bell's continued compliance with its statutory obligations. And we anticipate that the California Commission will take steps to adopt the safeguards necessary to protect consumers and to prevent the possibility of harmful conduct in the market. I am pleased that the Order expressly recognizes that a State Commission retains the authority to enforce safeguards that promote a pro-competitive telecommunications market, protect consumers, and ensure service quality. To this end, I note that the California Commission in the near future may take steps to implement additional safeguards. If we take our shared responsibility under the Act seriously, I believe we can ensure that Pacific Bell does not act anti-competitively in the market. In the event that such conduct does come to pass, we and the State Commission must not hesitate to use our enforcement tools vigorously.

Another important issue in this proceeding is whether Pacific Bell has complied with a checklist requirement to ensure that telecommunications services are made available for resale. More precisely, the issue concerns whether Pacific Bell has met its obligation to make its DSL services available for resale. In the *SBC Arkansas/Missouri 271 Application*, the Commission concluded that our precedent on this issue is not adequately clear. Although I believed it would have been preferable to resolve the issue in that application, I agreed to a separate expeditious proceeding with a full record to clarify the situation. The Commission committed to a timely disposition with an NPRM by the end of 2001 and resolution of the issue as soon as possible in 2002. We are now a few short days away from the end of 2002 and we ***still*** have not provided the promised clarity. I am deeply troubled that we find ourselves in this position, but I cannot vote to deny an application when it is the Commission itself that has failed to provide clarity and direction.

Finally, I am concerned about the pricing decisions in this proceeding. The Order applies a benchmark analysis to compare the rates in California to those in Texas. In light of the age of the Texas rates and the decision of the Texas Commission to open a new rate proceeding, I question whether Texas is an appropriate benchmark. Nevertheless, the Order expressly recognizes that if Texas' rates were to be reduced so that the comparison is no longer valid, Pacific Bell may no longer be in compliance with Section 271. Our precedent holds that this would, in fact, be a subject for Commission scrutiny. Moreover, the California rates generally fall significantly below what the benchmark would allow. For example, our model predicts that loop costs are fourteen percent lower in California than in Texas, but the rate Pacific Bell charges for loops is 30 percent lower in California.

The problems raised in this proceeding highlight, once again, the pressing need for a systematic, comprehensive and ongoing post-Section 271 review process to assure the reality of continued competition in all states where approvals have been granted. Competition is not guaranteed by some mad 100-yard dash to temporary compliance with a 14 point check list. Rather, it is sustained by the follow-on activities of incumbent and competitor companies and disciplined oversight by the state and federal regulatory bodies that are tasked with developing a competitive telecommunications environment.

I believe that Pacific Bell has worked hard to comply with Section 271 in California. Given the concerns raised by the California Commission, I hope and trust that we and the State will work closely together to monitor and assess Pacific Bell's continuing performance in California, and that approval does indeed, over the long haul, serve the public interest.